LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
APR 12 1955
HAROLD B. WILLEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 468

ROBERT CECIL BELL, *Petitioner*

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR PETITIONER

JAMES R. BROWNING,
Counsel for Petitioner.
Suite 1021 Tower Bldg.
Washington 5, D. C.

PERLMAN, BALDRIDGE, LYONS & BROWNING,
Suite 1021 Tower Bldg.,
Washington 5, D. C.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Statute involved	2
Question presented	2
Statement	2
Summary of argument	6
Argument:	
I. The statutory language and legislative history indicate a legislative intent that the penalty provided shall apply to each act of transportation	19
The statutory language	19
The legislative history	23
II. The statute has been construed as condemning an act of immoral transportation, and not the means, purposes or subjects which the act of transportation may embrace	28
Conclusion	45

CITATIONS

Cases:

Alabama Packing Co. v. *United States*, 167 F. 2d 179 (C. A. 5)	17, 18
Albrecht v. *United States*, 273 U. S. 1	16, 23, 38
Anderson v. *United States*, 189 F. 2d 202 (C. A. 6)	16, 22
Badders v. *United States*, 240 U. S. 391	16, 20, 34
Baltimore and Ohio Southwestern Railroad Co. v. *United States*, 220 U. S. 94	17
Batsell v. *United States*, 217 F. 2d 257 (C. A. 8)	31
Bell v. *United States*, 213 F. 2d 629 (C. A. 6)	39
Bennett v. *United States*, 227 U. S. 333	32, 36, 44
Blain v. *United States*, 22 F. 2d 393 (C. A. 8)	30
Blockburger v. *United States*, 284 U. S. 299	16, 37
Bowker v. *Hunter*, 158 F. 2d 854 (C. A. 10)	31

Page
Braverman v. *United States*, 317 U. S. 49 11, 20, 21, 37
Caballero v. *Hudspeth*, 114 F. 2d 545 (C. A. 10) 17, 30, 34, 36
Caminetti v. *United States*, 242 U. S. 470 24, 29, 44
Clark v. *United States*, 211 Fed. 916 (C. A. 8) 16, 22
Cleveland v. *United States*, 329 U. S. 14 24, 29, 45
Corbett v. *United States*, 299 Fed. 27 (C. A. 9) 40
Costner v. *United States*, 139 F. 2d 429 (C. A. 4) 42
Crespo v. *United States*, 151 F. 2d 44 (C. A. 1), certiorari dismissed 327 U. S. 758 33
D'Allessandro v. *United States*, 90 F. 2d 640 (C. A. 3) 3
Dawson v. *United States*, 10 F. 2d 106 (C. A. 9), certiorari denied 271 U. S. 687 40
Dimenza v. *Johnston*, 130 F. 2d 465 (C. A. 9), (on rehearing, 131 F. 2d 47) 17, 22, 42
Dodson v. *United States*, 215 F. 2d 196 (C. A. 6) 32
Duboice v. *United States*, 195 F. 2d 371 (C. A. 8) 17, 42
Dunlop v. *United States*, 165 U. S. 486 16
Ebling v. *Morgan*, 237 U. S. 625 16, 21
Ellis v. *United States*, 138 F. 2d 612 (C. A. 8) 31
Flemister v. *United States*, 207 U. S. 372 16
Gavieres v. *United States*, 220 U. S. 338 16
Gebhart v. *United States*, 163 F. 2d 962 (C. A. 8) 17, 42
Gebardi v. *United States*, 287 U. S. 112 22, 29, 34, 39
Gillenwater v. *Biddle*, 18 F. 2d 206 (C. A. 8) 32
Gooch v. *United States*, 82 F. 2d 534 (C. A. 10), affirmed, 297 U. S. 124 17
Grant Brothers Construction Co. v. *United States*, 232 U. S. 647 28
Gray v. *United States*, 174 F. 2d 919 (C. A. 8), certiorari denied, 338 U. S. 848 17
Halverson v. *United States*, 162 F. 2d 308 (C. A. 9) 18, 22
Hansen v. *Haff*, 291 U. S. 559 29
Harris v. *United States*, 227 U. S. 340 32
Hewitt v. *United States*, 110 F. 2d 1 (C. A. 8), certiorari denied 310 U. S. 641 17, 42
Hoke v. *United States*, 227 U. S. 308 29, 33
In re Henry, 123 U. S. 372 16, 20
In re Snow, 120 U. S. 274 17, 18, 20
Johnston v. *Lagomarsino*, 88 F. 2d 86 (C. A. 9) 17, 22
Keller v. *United States*, 213 U. S. 138 24

Page
Kerr v. *Squier*, 151 F. 2d 308 (C. A. 9) 17, 22
Lockhart v. *United States*, 136 F. 2d 122 (C. A. 6) 17, 22, 42
McTyre v. *United States*, 213 F. 2d 65 (C. A. 5) 31
Malaga v. *United States*, 57 F. 2d 822 (C. A. 1) 30
Mallory v. *United States*, 126 F. 2d 192 (C. A. 9) 3
Mellor v. *United States*, 160 F. 2d 757 (C. A. 8), certiorari denied, 331 U. S. 848 9, 30, 32
Miller v. *United States*, 95 F. 2d 492 (C. A. 9) 40
Morgan v. *Devine*, 237 U. S. 632 6, 11, 16, 17, 35, 36
Mortensen v. *United States*, 322 U. S. 369 3, 22, 24, 29, 44
Neff v. *United States*, 105 F. 2d 688 (C. A. 8) 31
Parmagini v. *United States*, 42 F. 2d 721 (C. A. 9), certiorari denied, 283 U. S. 818 16, 22
Pereira v. *United States*, 347 U. S. 1 16
Pinkerton v. *United States*, 328 U. S. 640 16
Reed v. *United States*, 142 F. 2d 435 (C. A. 5) 30
Roark v. *United States*, 17 F. 2d 570 (C. A. 8) 30
Robinson v. *United States*, 143 F. 2d 276 (C. A. 10) 31, 32
Rodd v. *United States*, 165 F. 2d 54 (C. A. 9, certiorari denied 334 U. S. 815 16
Rutkowski v. *United States*, 149 F. 2d 481 (C. A. 6) 18
St. Clair v. *Hiatt*, 174 F. 2d 374 (C. A. 5), certiorari denied 339 U. S. 967 33
Schultz v. *Biddle*, 15 F. 2d 478 (C. A. 8) 42
Schultz v. *Zerbst*, 73 F. 2d 668 (C. A. 10) 42
Sepulveda v. *Squier*, 192 F. 2d 796 (C. A. 9) 28
Serentino v. *United States*, 36 F. 2d 871 (C. A. 1) 28
Sink v. *Cox*, 142 F. 2d 917 (C. A. 8) 30
Smith v. *United States*, 211 F. 2d 957 (C. A. 6) 6, 17, 18, 22
Swanue Soon Young Pang v. *United States*, 209 F. 2d 245 (C. A. 9) 32
United States v. *Adams*, 281 U. S. 202 21
United States v. *Beach*, 324 U. S. 193 9, 22, 24, 29
United States v. *Beacon Brass Co.*, 344 U. S. 43 16
United States v. *Cason*, 39 F. Supp. 730 (D.C.W.D. La.) 17, 22
United States v. *Evans*, 333 U. S. 483 18
United States v. *Falcone*, 311 U.S. 205 34
United States v. *Fleenor*, 162 F. 2d 935 (C. A. 7) 32
United States v. *Halseth*, 342 U. S. 277 18

Page

United States v. *Holte*, 236 U. S. 140 ..... 22, 24, 39
United States v. *Komie*, 194 Fed. 567 (D.C.N.D. Ill.) 17, 18
United States v. *Martinez-Gonzales*, 89 F. Supp. 62 (D.C.S.D. Cal.) 28
United States v. *Matsinger*, 191 F. 2d 1014 (C.A. 3) 17, 22
United States v. *Michner*, 331 U. S. 789 16
United States v. *Noveck*, 271 U. S. 201 18
United States v. *Orman*, 207 F. 2d 148 (C. A. 3) 18, 22
United States v. *Resnick*, 299 U. S. 207 18
United States v. *St. Clair*, 62 F. Supp. 795 (D.C.W.D. Va.) 33
United States v. *Scott*, 74 Fed. 213 (D.C.D. Ky.) 17, 22
United States v. *Universal CIT Credit Corp.*, 344 U. S. 218 ..... 17, 18, 19, 21, 34
United States v. *Westman*, 182 Fed. 1017 (D.C.D. Ore.) 32
United States v. *Wiltberger*, 5 Wheat. 76 ..... 18, 19
Vautrot v. *United States*, 144 F. 2d 740 (C. A. 8) 17, 22, 42
Ward v. *United States*, 183 F. 2d 270 (C. A. 10), certiorari denied, 340 U. S. 864 ..... 17, 42
Warner v. *Pescor*, 163 F. 2d 670 (C. A. 8) 17, 22
Wilkes v. *Dinsman*, 7 How. 89 16
Wilson v. *United States*, 232 U. S. 563 41

Statutes:

Twenty-eight Hour Law, 34 Stat. 607 17
Act of July 1, 1907, 34 Stat. 898 ..... 8, 26
Act of March 26, 1910, 36 Stat. 263 24
White Slave Traffic Act, 36 Stat. 825 (18 U.S.C. 2421-2423) 2, 3, 6, 7, 15, 26, 33
Fair Labor Standards Act, 52 Stat. 1060, as amended 63 Stat. 910 17
Act of July 30, 1947, 61 Stat. 633 21
1 U.S.C. 1 ..... 7, 21
8 U.S.C. 1321-1324 27
18 U.S.C. 2 ..... 22, 31
18 U.S.C. 371 ..... 11, 34, 36
18 U.S.C. 602 17
18 U.S.C. 1005 22
18 U.S.C. 1201 17

	Pag
18 U.S.C. 1341	10, 20, 3
18 U.S.C. 2113	13, 1
18 U.S.C. 2114	4
18 U.S.C. 4161	1
18 U.S.C. 4163	1
18 U.S.C. 2113	4
28 U.S.C. 1254 (1)	
28 U.S.C. 2255	2,

Miscellaneous:

Senate Report No. 886, 61st Cong., 2d Sess.	25, 2
House Report No. 47, 61st Cong., 2d Sess.	24, 2
56 Cong. Rec. 245	2
45 Cong. Rec. 286	2
45 Cong. Rec. 814-821, 1035-1040	2
45 Cong. Rec. 3855	2
45 Cong. Rec. 9118	2

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 468

ROBERT CECIL BELL, *Petitioner*

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR PETITIONER

Opinion Below

The opinion of the United States Court of Appeals for the Sixth Circuit (R. 15-17) is reported at 213 F.2d 629. The two memoranda opinions of the United States District Court for the Eastern District of Tennessee, Southern Division (R. 8-9, 13), are not reported.

Jurisdiction

On June 25, 1954, the United States Court of Appeals for the Sixth Circuit affirmed the judgment of the district court denying petitioner's Motion to Correct Sentence, filed under

28 U.S.C. § 2255 (R. 14-45). Motion for leave to proceed in forma pauperis and a petition for certiorari were filed in this Court July 16, 1954, and were granted December 6, 1954 (348 U.S. 895). The jurisdiction of the Court is based upon 28 U.S.C. § 1254(1).

Statute Involved

The case arises under the first paragraph of 18 U.S.C. § 2421 (formerly Section 2 of the White Slave Traffic Act of June 25, 1910, 36 Stat. 855, Ch. 395), which reads as follows:

> Whoever knowingly transports in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice. . . .
>
> Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

The four sections of the Criminal Code (18 U.S.C. §§ 2421-2423) which are based upon the White Slave Traffic Act are set out in their entirety in an appendix, *infra*, pp. 46-49.

Question Presented

Did 18 U.S.C. § 2421 authorize the imposition upon petitioner of two separate prison sentences for a single act of interstate transportation, because two women were passengers in the vehicle?

Statement

On April 27, 1953, an indictment was returned in the United States District Court for the Eastern District of

Tennessee, Southern Division, charging the petitioner, Robert Cecil Bell, with violation of the White Slave Act (18 U.S.C. § 2421). The indictment was in six counts. The First Count charged petitioner with the transportation on February 25, 1953, of a woman named Normer Tanner Lay in interstate commerce from Asheville, North Carolina, to Knoxville, Tennessee, and thence to Chattanooga, Tennessee, for the purpose of prostitution. The Second Count was identical with the first, except that a woman named Opal Denmark Miller was identified as the subject of the transportation. The remaining four counts of the indictment were based upon two other interstate trips on two different dates involving the same two women. (R. 1-2.)

Petitioner was taken before the district court on April 29, 1953, and, upon his representation that he desired an attorney but could not employ one, the court appointed a Mr. Baker to act on his behalf (R. 3-4). Petitioner conferred briefly with Mr. Baker, who advised him to plead guilty to all six counts of the indictment (R. 4, 12). Petitioner declined to do so, and on being arraigned entered a plea of not guilty. In explanation of his plea, petitioner informed the court that he had not transported the two women for the purpose of prostitution, but was simply hired by them as a chauffeur. The court advised the petitioner that this fact, if true, would constitute a defense to the charge[1] (R. 4). The court thereupon relieved Mr. Baker, appointed a Mr. Dietzen as petitioner's attorney, and fixed a trial date of May 13, 1953.

---

[1] The primary purpose of the White Slave Traffic Act was to deny to panderers and procurers the use of the facilities of interstate and foreign commerce as a means of procuring and distributing the subjects of their vicious "trade." *Mortsensen* v. *United States*, 322 U.S. 369, 377. It is the intent of the transporter which governs, not that of the females transported (*Mallory* v. *United States*, 126 F. 2d 192 (C.A. 9)); and the Act does not reach a mere chauffeur. *D'Allessandro* v. *United States*, 90 F. 2d 640, 641 (C.A. 3).

Petitioner states that after the arraignment the Assistant United States Attorney advised him that if he would plead guilty to the first two counts of the indictment the remaining four counts would be dismissed, but that he declined to change his plea in the absence of some assurance as to the sentence. He further states that the following morning (April 30) he was informed by the United States Marshal that if he entered a plea of guilty to the first two counts of the indictment he would receive a total sentence of less than the maximum of five years, and petitioner agreed to a change of plea on this basis (R. 12). In any event, on April 30,[2] after conferring for "just a few minutes" with counsel appointed by the court the previous day, petitioner withdrew his plea of not guilty to the First and Second Counts of the indictment, and entered a plea of guilty, and, on motion of the United States Attorney, the court thereupon dismissed the remaining four counts (R. 6).

Before sentence, petitioner's counsel, though confessing that he had "not had much opportunity to talk with" petitioner, advised the court that the transportation upon which the indictment was founded appeared to have arisen out of an agreement between the two women involved to "visit around hotels, more or less on a partnership proposition." (R. 6-7.) Petitioner, on his own behalf, described to the court the circumstances in which, unemployed and hungry, he met the women, engaged their sympathies and aid, and accepted employment "to act as their driver" on a trip which they wanted to make, neither of the women being able to drive. Although the trip was begun in a rented car, the women eventually purchased an automobile with their earnings, and petitioner's ultimate compensation was to be the gift of this automobile when the women had learned to drive sufficiently well to go on without him. (R. 7.)

---

[2] The Record erroneously dates the proceedings on sentence as of May 13, 1953 (R. 6). See Judgment and Commitment (R. 2).

After hearing petitioner and counsel, the court sentenced petitioner to imprisonment for two years and six months on the First Count of the Indictment, and to two years and six months on the Second Count of the Indictment, to begin at the expiration of the sentence imposed on the First Count (R. 2).

On August 5, 1953, the petitioner, by letter addressed to the sentencing judge, requested that the sentence imposed on the Second Count be made to run concurrently with that imposed on the First Count, on the ground that both counts reflected a simultaneous and continuing act and constituted but a single violation of the statute (R. 7-8). The court treated the letter as a motion under 28 U.S.C. § 2255 to correct the sentence, and denied it on the same date (R. 8-10). The district court conceded that "the transportations" charged in the two counts were "on the same date and on the same interstate trip," but concluded, without analysis, that where the alleged violation of the White Slave Traffic Act "involved the interstate transportation of more than one female, in the same automobile at the same time, transportation of each female constitutes a separate offense" (R. 9).

On October 27, 1953, petitioner renewed his motion for correction of sentence, urging again that the sentence on the second count was invalid, and, further, that his plea to the indictment "was used for entrapment," apparently on the basis of the alleged promise of the United States Marshal with respect to the maximum sentence that would be imposed (R. 10-12).

In a memorandum opinion dated November 5, 1953 (R. 13), the district court concluded that "[t]here was no illegality made in the judgment against petitioner and the petition does not present one for investigation," and denied the motion (R. 13-14).

Petitioner took an appeal to the United States Court of

Appeals for the Sixth Circuit. The case was submitted on briefs, petitioner proceeding *pro se*. The court of appeals affirmed the judgment below on June 25, 1954 (R. 14-15). Like the district court, the court of appeals conceded "that in fact the appellant had transported two women on the same trip and in the same vehicle" (R. 15). Nonetheless, relying upon its interpretation of the "same evidence" test enunciated in *Morgan* v. *Devine*, 237 U.S. 632, 641, the court of appeals held that since proof of the unlawful purpose with respect to one woman would not establish the unlawful purpose with respect to the other, two separate offenses were committed. The court distinguished its own earlier decision in *Smith* v. *United States*, 211 F.2d 957 (C.A. 6), holding that the simultaneous theft of two letters from the mail constituted but a single offense against 18 U.S.C. § 1708 prohibiting the theft of "any letter, postal card . . ." etc., with the statement that "the difference lies in the inherent difference that exists between inanimate objects and human beings," in that a separately formed criminal intent "cannot be assumed" where the subjects are inanimate, while the separate formation of criminal intent is "inescapable" where the subjects of the offense are animate. (R. 16-17.)

Summary of Argument

The Court below construed 18 U.S.C. §2421 as authorizing the imposition of two separate terms of imprisonment for a single act of interstate transportation involving two females. Criminal statutes are to be strictly construed and petitioner is entitled to relief from this double punishment, and to his freedom, unless Congress has clearly and definitely expressed an intention that a single continuous act of criminal transportation constitutes as many separate simultaneous violations of the statute as there are women transported.

I

Section 2421 is directed at "Whoever knowingly transports . . . " etc. The words of the statute condemn the act of transporting "any" female, when accompanied by the requisite criminal intent. A single act of transportation is not rendered multiple by the fact that more than one female is transported. "Any" does not mean "each," and 1 U.S.C. §1 requires that the phrase "any woman or girl" be read to "include and apply to several persons." Numerous federal criminal statutes creating crimes affecting "any" of a defined class of objects or persons have been construed by this Court and the lower federal courts as creating a single offense without respect to the number of objects or persons involved in a given case. The usual meaning of the adjective "any" in a criminal statute is inclusive—it is employed to make it clear that *every* instance of the prohibited conduct is subject to the penalty provided—and the natural meaning of the language of Section 2421 is that every act of transportation within its terms is punishable whether it involves one female or several; whether they are prostitutes or women of virtue; whether they are acquiescent or acting under compulsion.

The conclusion that the purpose of this language of Section 2421 was to reach the act of transportation as such, is verified by the statutory context. The act of enticing or coercing females to go from one place to another is punished by Sections 2422 and 2423. The act of procuring the transportation, or tickets for it, is punished by the second paragraph of Section 2421. The act of transportation itself is punished by the first paragraph of Section 2421. Thus the structure of the statute as a whole suggests that Congress meant to punish each step leading to the act of transportation, and finally, as we contend, the act of transportation itself.

The Mann Act was introduced, considered and passed in an atmosphere of public clamor against the national and international "White Slave" traffic. The title of the bill, the committee reports, and the legislative debates reflect a purpose to reach and punish the movement of women and girls in commerce for immoral purposes. It was repeatedly asserted that for constitutional purposes and to avoid interference with the police powers of the states, the prohibitions of the Mann Act pertinent here were aimed exclusively at the transportation of persons in commerce. The provisions of the act relating to enticement and coercion and to the purchase of tickets were conditioned upon the occurrence of an act of transportation, and the provision of the statute involved in this case is explicitly directed at "Whoever knowingly transports", etc. From the legislative history as from the statutory language it would therefore seem reasonable to take the act of transportation itself as the intended measure of the offense created by the latter provision of the statute.

Words were readily available to express the purpose if Congress had desired to divide the physical unity of the act of transportation into separate offenses for each female. In Section 5 of the Act of July 1, 1907 (34 Stat. 898), for example, Congress provided that "separate suits may be brought for each alien" to recover the penalty imposed for the misdemeanor of encouraging the importation of a contract laborer. (34 Stat. 900). In Section 8 of the same statute Congress provided that the penalty for the crime of landing "any alien" not entitled to enter, was applicable "for each and every alien so landed." (34 Stat. 900-901). This statutory language was enacted just three years before the passage of the Mann Act, and the statute of which it was a part was before the Congress for amendment at the very time that the Mann Act was considered and passed.

Comparable provisions expressly fixing the individual as the unit of the offense where this was intended are found in the Immigration and Nationality Act of 1952. The Courts have relied entirely upon this explicit language in imposing separate penalties for each alien under these statutes, strongly implying that in its absence a contrary result would be reached.

II

This Court has consistently treated the act of interstate transportation as the gist of the offense created by the first paragraph of 8 U.S.C. §2421. The federal government has no inherent police power. The sole basis for federal intervention in this area is the involvement of interstate commerce, and the object of the Mann Act is to deny the facility of interstate commerce to an evil and injurious trade. Consequently what the statute punishes, as this Court has repeatedly said, is the act of criminal transportation for the purposes described. See, e.g., *United States* v. *Beach*, 324 U.S. 193, 195: " 'transportation' for immoral purposes * * * is the act condemned by the Mann Act."

In accordance with the premise that the interstate transportation is the act condemned, a majority of the lower federal courts have held that the act of transportation is the measure of the offense created by the pertinent language of Section 2421, and that a single act of transportation therefore constitutes a single violation of the statute, whether the means, purposes, or subjects of the act of transportation are one or several. Thus it is uniformly held that a single act of transportation constitutes only one offense though the transporter entertained more than one of the immoral purposes described in the statute. *Mellor* v. *United States*, 160 F. 2d 757, 762 (C.A. 8), certiorari denied 331 U.S. 848, is illustrative. Similarly, it has been

held that the fact that the offender not only performed the single act of transportation, but also caused it, and aided and assisted in it, in violation of the further specific prohibitions of the statute in its original form, did not make several the single offense arising from the single act of transportation. The premise that the act of transportation is the gist of the offense under Section 2421, has also been adopted by the federal courts in a variety of other situations.

On the precise question involved in this proceeding the Tenth Circuit has ruled in accord with the petitioner's position, and the Eighth Circuit has indicated that it considers this the better view. A district court in the Ninth Circuit is in accord, and the reports contain numerous cases in which the prosecutor has treated the act of transportation as the measure of the offense by alleging the simultaneous transportation of a number of women as a single crime.

The Court below and three others have held to the contrary, but the grounds upon which these decisions rest are demonstrably unsound.

Contrary to the argument of these decisions, the fact that the act of transportation is innocent standing alone does not mean that it cannot provide the measure of the offense when accompanied by the requisite intent. The deposit of a letter is an innocent act, but when part of a scheme to defraud, the act becomes the unit of the offense under the Mail Fraud Statute (18 U.S.C. §1341).

The main reliance of the contrary cases is upon the argument that the criminal purpose defined in Section 2421 is necessarily selective as to each individual female, and peculiar to her, and that Congress must be assumed to have intended that this "separate" intent, plus the general act of transportation should make out a separate offense as to

each woman. The contention confuses multiple objects with multiple intents. In the present case, for example, petitioner obviously acted with a single purpose that embraced the movement and activities of Miss Lay and Miss Miller equally and indifferently. To construe the statute on the assumption that every transporter necessarily and invariably entertains a distinct and separate intent with respect to each woman transported would be to base interpretation on a transparent fiction.

The error is more basic, however. The argument misconceives the nature of the offense. The statute prohibits a use of interstate commerce with an immoral purpose. If an act of transportation is performed with the requisite intent the policy of the statute is violated, the definition of the offense is satisfied, and the transporter is subject to the statute's penalties. The cases have uniformly held that where a single act of transportation with the requisite intent has occurred, the offense is not multiplied simply because the transporter's intent exceeded the minimum required by the statute and embraced two or more of the criminal purposes listed in the statutory definition of the offense. There is no reason why the same result should not follow where the transporter's intent exceeds the requisite intent by encompassing more than a single female. Whether the intent directed at several females is described as single or multiple is immaterial, the test is whether the act of transportation made punishable by the statute has been committed once or several times "with the requisite intent". *Morgan* v. *Devine*, 237 U. S. 632, 640.

The offense created by the general conspiracy statute offers a pertinent analogy. 18 U.S.C. §371 makes it a crime "to conspire . . . to commit any offense against the United States." In *Braverman* v. *United States*, 317 U. S. 49, this Court held that the statute is directed at the act of conspir-

ing to commit a crime, as distinguished from the substantive crime itself; that the offense is completed by a single agreement to commit "any" crime (followed by an overt act); and that a single agreement does not become several simply because the intent of the conspirator includes the commission of several crimes rather than one. Where multiple objects are embraced in a single prohibited act which violates only a single statute, this Court stated, the single act is subject to but one penalty however diverse the objects. So here. The Mann Act is directed at the act of transportation for an immoral purpose, as distinct from the immoral conduct which is contemplated; the offense is completed by a single act of transportation involving "any" woman with the requisite intent; and a single act of transportation does not become several simply because the criminal intent of the transporter is directed at several women rather than one. The single act of transportation violating a single statutory prohibition is subject to only one penalty however diverse the objects which it embraces.

It is contended that Section 2421 should be construed as creating a separate offense with respect to each female transported because the real purpose of Congress was to inhibit immoral conduct and protect each female from victimization, and not simply to prohibit immoral transportation as such. But as this Court has said, Congress set out to deal with cases which frequently, if not normally, involve the acquiescence of the female. This Court has expressly rejected "the illusion that the woman is always the victim" as a basis for the construction of the statute, and has held that she may be guilty of conspiring to transport herself. The real object of the statute was to protect the public by prohibiting the use of the channels of commerce to facilitate prostitution or other immoral activities. The statute is directed against the person who uses commerce for these pur-

poses, whether the subjects are prostitutes aggressively pursuing their profession as independent entrepreneurs, as in the present case, or truly victims. In either case, the channels of commerce are fouled by an act of evil transportation, and it is this act which the statute prohibits.

This Court has rejected earlier invitations to construe the statute as if its object were to prevent immorality, as such, "and not the mere act of transportation." Congress had no power to deal with local immoral conduct and repeatedly insisted that it was not attempting to do so. Whatever may have motivated Congress, the legislative intent was to reach and punish the act of transportation, which was the exclusive basis of the legislative power, and the statutory penalty should be applied accordingly.

In another variation of this same theme, it is argued that the offense defined by Section 2421 is an "offense against persons," and that the person is typically the unit of the offense in this class of crimes. The offense defined by Section 2521 is not an offense against persons, but an offense against commerce, and the proper measure of the offense is therefore the act against commerce itself. Similarly, a single act of transportation produces only a single "consequence" in terms of this penal prohibition protecting commerce, whether one person is carried or several.

18 U.S.C. §2113(d) provides that whoever in committing robbery or larceny of a bank within the federal control, "assaults *any* person, or puts in jeopardy the life of *any* person by use of a dangerous weapon" (emphasis supplied) shall be subject to a prescribed penalty. The courts uniformly hold that the offense created by this statute is robbery or larceny of a federally regulated institution by assault; that the offense is completed it in the course of the robbery of a federal bank "any person" is assaulted, and the violation is not multiplied because the assault is directed

at a number of persons, though the contrary might be true if the offense under the statute were the assault itself. So in the present case, the offense is transportation for immoral purposes and not the immoral conduct itself, and whatever the proper interpretation of the statute might be if an offense against the person were in fact its subject matter, a single act of prohibited transportation remains single though several persons are transported, and the penalty of the statute should be applied accordingly.

It is argued that a separate offense is created as to each female by Section 2421, because the proof required to establish an immoral purpose as to female A is different than that required to show the requisite purpose as to female B. If this were all that the "same evidence" test meant, every criminal act directed at more than one person or one object would necessarily be divisible by the number of persons or objects involved. The federal courts have repeatedly held to the contrary. It is questionable whether the test has any utility in determining whether a single act constitutes one or more violations of a single statute, but at least it must be applied wih careful reference to the nature of the offense created by the statute. The offense created by Section 2421 is the act of transporting a female in interstate commerce with the requisite intent. While proof of the transportation of female A with the requisite intent would be different from proof of the transportation of female B with the requisite intent, either set of evidentiary data would be sufficient to convict the transporter under an indictment alleging the single act of transportation of A and B with the required intent, and this is the single offense created by the statute.

It is clear that at the very minimum a purpose to create a distinct offense with respect to each female involved in a single act of interstate commerce is not clearly and plainly expressed by Section 2421.

Argument

Petitioner was sentenced to two consecutive terms of imprisonment because he drove two women in their automobile from North Carolina to Tennessee for the purpose of prostitution. The interstate trip on which the two sentences were based was concededly a single continuous journey. Both of the sentences imposed upon petitioner were based upon a single provision of 18 U. S. C. § 2421, prohibiting the transportation in interstate commerce of "any" woman for immoral purposes. The court below held that this single act of transportation constituted two simultaneous violations of the statute because two women were passengers in the vehicle.[3]

We submit that this construction of the statute is erroneous. The language of this provision of the Mann Act, its statutory context, and its legislative history indicate that the act of transportation itself was the intended unit of the offense created. This Court has consistently construed the pertinent provisions of the statute as condemning an act of criminal transportation. In accordance with this construction, a majority of the lower federal courts have held that a single act of transportation with the requisite intent constitutes but a single offense against the statute, and that the prosecutor may not carve a single act of criminal transportation into a number of offenses simply because in a particular case the act of transportation may have embraced several means, purposes, or subjects. Only the case below and the few with which it is in accord have held to the con-

---

[3] Mr. Bell was committed to the custody of the Attorney General for imprisonment on April 30, 1953 (R. 2-3). With credit for the good time allowance provided by statute (18 U.S.C. § 4161), he would be entitled to release from custody on May 1, 1955 (18 U.S.C. § 4163), except for the additional sentence imposed upon him for the same act of transportation under the Second Count.

trary, and we will show that the grounds upon which they are based are clearly faulty.

The court below construed the pertinent language of Section 2421 as creating a single offense capable of being committed repeatedly in the same instant by the same indivisible act. The decision cannot be supported by cases in which a criminal statute is construed as penalizing successive repetitions of the prohibited act, even though they occur as a part of a continuous transaction.[4] It cannot be supported by cases which interpret two or more criminal statutes as creating separate offenses which may be committed as a part of a single transaction.[5]

A federal criminal statute is not to be construed as creating multiple offenses simply because the prohibited criminal act has multiple objects; and, contrary to the assumption of the Government and the court below, it makes no difference whether the multiple objects are inanimate[6] or ani-

---

[4] In this situation multiple sentences are appropriate to punish the repeated violations of the statutory prohibition, however closely together they occur in time. Cases in this class include *Badders* v. *United States*, 240 U. S. 391; *Ebling* v. *Morgan*, 237 U. S. 625; *Flemister* v. *United States*, 207 U. S. 372; *In re Henry*, 123 U. S. 372; and *Wilkes* v. *Dinsman*, 7 How. 89.

[5] In this situation separate sentences serve to vindicate the separate commands of the sovereign state, each designed to protect a distinct public interest. Cases in this group include *Pereira* v. *United States*, 347 U. S. 1; *United States* v. *Beacon Brass Co.*, 344 U. S. 43; *United States* v. *Michner*, 331 U.S. 789; *Pinkerton* v. *United States*, 328 U. S. 640; *Albrecht* v. *United States*, 273 U. S. 1; *Morgan* v. *Devine*, 237 U. S. 632; and *Gaviero* v. *United States*, 220 U. S. 338. Both situations were present in *Blockburger* v. *United States*, 284 U. S. 299.

[6] There are a multitude of cases in the federal courts holding that offenses created by a variety of federal statutes are single, though multiple inanimate objects are effected: deposit in the postoffice of 100 copies of an obscene publication, *Dunlop* v. *United States*, 165 U. S. 486 (no discussion); accord: *Rodd* v. *United States*, 165 F. 2d 54 (C.A. 9), certiorari denied, 334 U. S. 815, and *Clark* v. *United States*, 211 Fed. 916 (C.A. 8); single purchase of four bottles of narcotics, *Anderson* v. *United States*, 189 F. 2d 202 (C.A. 6); concealment of two drugs in one package, *Parmagini* v. *United States*, 42 F. 2d 721 (C.A. 9), certiorari de-

nate.[7] The problem of statutory construction cannot be resolved by speculating as to the number of "intents" the defendant may have entertained. The question is not whether defendant's intent was multiple or single, "but whether separate acts have been committed with the requisite intent, and are such as are made punishable by the Act of Congress."[8] Similarly, the so-called "same evidence test" provides no simple key to interpretation. The measure of crimi-

---

nied, 283 U. S. 818; single shipment in interstate commerce of a number of packages of adulterated or misbranded substances, *Gray* v. *United States*, 174 F. 2d 919 (C.A. 8), certiorari denied, 338 U. S. 848; delivery of four different grades of meat: *Alabama Packing Co.* v. *United States*, 167 F. 2d 179 (C.A. 5); simultaneous deposit of two checks in a "kiting" operation, *United States* v. *Matsinger*, 191 F. 2d 1014, 1018 (C.A. 3); issuance of seven money orders at same time and place, *United States* v. *Komie*, 194 Fed. 567 (D.C. N.D. Ill.); simultaneous theft of several mailbags, *Kerr* v. *Squier*, 151 F. 2d 308 (C.A. 9), and *Johnston* v. *Lagomarsino*, 88 F. 2d 86 (C.A. 9) (contra: *Warner* v. *Pescor*, 163 F. 2d 670 (C.A. 8)); simultaneous embezzlement of two letters, *Smith* v. *United States*, 211 F. 2d 957 (C.A. 6).

[7] In *United States* v. *Universal CIT Credit Corporation*, 344 U. S. 218, this Court rejected the suggestion that the unit of the offense under the Fair Labor Standards Act was the number of employees underpaid or overworked, and in *In re Snow*, 120 U. S. 274, it was assumed that continuous cohabitation with seven women was a single offense under another federal statute. Assaults directed against a number of persons in the course of a single bank robbery constitute a single offense under 18 U.S.C. § 2113, *Dimenza* v. *Johnston*, 130 F. 2d 465 (C.A. 9); *Vautrot* v. *United States*, 144 F. 2d 740 (C.A. 8); *Lockhart* v. *United States*, 136 F. 2d 122 (C.A. 6). See, also, *Dubeice* v. *United States*, 195 F. 2d 371 (C.A. 8); *Ward* v. *United States*, 183 F. 2d 270 (C.A. 10), certiorari denied, 340 U. S. 864; *Gebhart* v. *United States*, 163 F. 2d 962 (C.A. 8); *Hewett* v. *United States*, 110 F. 2d 1 (C.A. 8), certiorari denied, 310 U. S. 641. The simultaneous kidnapping and transportation of two persons was alleged as a single offense under 18 U.S.C. § 1201 in *Gooch* v. *United States*, 82 F. 2d 534 (C.A. 10), affirmed, 297 U. S. 124. The unlawful solicitation of political contributions from several persons as one act constitutes a single violation of 18 U.S.C. § 602. *United States* v. *Cason*, 39 F. Supp. 730 (D.C. W.D. La.); *United States* v. *Scott*, 74 Fed. 213 (D.C.D. Ky.). The penalty for violation of the Twenty-eight Hour Law is not measured by the number of cattle involved. *Baltimore and Ohio Southwestern Railroad Co.* v. *United States*, 220 U. S. 94.

[8] *Morgan* v. *Devine*, 237 U. S. 632, 640. See also, *Caballero* v. *Hudspeth*, 114 F. 2d 545, 547 (C.A. 10).

nal liability under a federal penal statute cannot turn upon whether the prosecutor has succeeded in selecting different factual details in drawing separate counts. In substantially every instance in which it has been held that only a single offense existed though various offenses were alleged, the separate counts as drawn clearly required different factual proof.[9]

Choosing between two possible interpretations of the criminal statute involved in the present case, the court below adopted the construction which, in every instance in which the question arises, will multiply the number of offenses and the possible punishment. A rule of construction said 135 years ago to be "not much less old than construction itself," requires that penal statutes be strictly construed. Marshall, C. J., in *United States* v. *Wiltberger*, 5 Wheat. 76, 94. While the intention of the lawmakers must govern in the construction of criminal statutes as well as of others, the regard of our law for the rights of individuals and the principle that the power to define crimes and ordain their punishment rests exclusively with the legislature, require that the intent to punish be clearly and plainly expressed.[10] Criminal statutes should not be read to create crimes unless the purpose to do so is plain; for in our federal jurisprudence, as this Court has said, "there are no constructive offenses."[11] In specific

[9] *In re Snow*, 120 U. S. 274, the three indictments related to cohabitation in different periods of time; in *United States* v. *Universal CIT Credit Corp.*, 344 U. S. 218, the multiple counts related to distinct records, employees, and periods of time. And see *Smith* v. *United States*, 211 F. 2d 957 (C.A. 6); *United States* v. *Orman*, 207 F. 2d 148 (C.A. 3); *United States* v. *Kunz*, 194 Fed. 567 (D.C. N.D. Ill.); *Alabama Packing Co.* v. *United States*, 167 F. 2d 179 (C.A. 5); *Halverson* v. *United States*, 162 F. 2d 308 (C.A. 9); *Rutkowski* v. *United States*, 149 F. 2d 481 (C.A. 6).

[10] *United States* v. *Wiltberger*, 5 Wheat. 76, 94-95; *United States* v. *Evans*, 333 U. S. 483, 486; *United States* v. *Halseth*, 342 U. S. 277, 279-280.

[11] *United States* v. *Resnick*, 299 U. S. 207, 210. *United States* v. *Noveck*, 271 U. S. 201, 204.

application to the instant case, the rule of strict construction means that in interpreting a criminal statute, "when choice has to be made between two readings of what conduct Congress has made a crime, it is appropriate before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite." [12] The petitioner was entitled to have any uncertainty or ambiguity in the statute resolved in favor of his liberty. It would not be enough to support the decision below even if it appeared that the construction placed upon the statute was probably correct, for "probability is not a guide which a court, in construing a penal statute, can safely take." *United States* v. *Wiltberger*, 5 Wheat. 76, 104.

We do not mean to suggest that the construction adopted in this case is the one which most probably reflects the legislative will. On the contrary, as we have said, the statutory language, the legislative history, and the pattern of judicial interpretation of similar statutes in the past, indicate preponderantly that Congress must be held to have intended by this statute to punish each act of unlawful transportation as a single offense, irrespective of the number of persons that might be transported. Under the rule of strict construction petitioner would be entitled to relief on a record much less clear than that presented here.

I

The Statutory Language and Legislative History Indicate a Legislative Intent That the Penalty Provided Should Apply to Each Act of Transportation

The Statutory Language. In seeking to determine the meaning of the language of the first paragraph of Section 2421, a helpful, if self-evident, guide may be derived from

[12] *United States* v. *Universal CIT Credit Corp.*, 344 U. S. 218, 221-222.

prior cases raising the question of the multiple application of a single criminal prohibition to a given factual situation. In interpreting criminal statutes for this purpose, the courts, in the absence of some clear indication that a different measure of the offense is intended, have accepted as the unit of prosecution the *act* of omission or commission at which the penal statute appears from its language to be immediately directed. Although difficult to phrase abstractly without appearing to beg the question, this basic guide has demonstrable utility in application to particular cases. A sampling of decisions from this Court will illustrate the point: The unit of the offense under a statute which provided for the punishment of any male person who "*cohabits* with more than one woman," is the "*cohabitation*" itself without respect to the length of time the cohabitation continued or the number of women, in excess of one, with whom it occurred. *In re Snow*, 120 U.S. 274. A statute punishing those who "*conspire* . . . to commit any offense" against the United States is violated once by a single *act of conspiring*, however numerous the offenses against the United States which it was the purpose of the conspiracy to commit. *Braverman* v. *United States*, 317 U.S. 49, 53. Whoever shall "*place* or cause to be placed any letter . . . in any post office" in furtherance of a scheme to defraud, violates the statute once with each "*overt act of putting* a letter into the postoffice." *Badders* v. *United States*, 240 U.S. 391, 394.[13] And a statute providing for the punishment of any person who shall "*cut* . . . any mail

---

[13] This construction of the Mail Fraud Statute (now 18 U. S. C. § 1341) was facilitated by the presence in the statute of the following provision: "The indictment . . . may severally charge offenses to the number of three when committed within the same six calendar months, but the court thereupon shall give a single sentence, and shall proportion the punishment especially to the degree in which the abuse of the Post Office Establishment enters as an instrument into such fraudulent scheme and device." *In re Henry*, 123 U. S. 372, 373, 374.

bag," with intent to rob the mail, is violated with "*each successive cutting*" of a mail bag, with the criminal intent required by the statute. *Ebling* v. *Morgan*, 237 U.S. 625, 629.

The words of the statute under which the counts of the indictment here were drawn read: "Whoever knowingly *transports* in interstate or foreign commerce . . . any woman or girl for the purpose of prostitution . . . shall be fined" etc. (emphasis supplied). The act to which the language is directed is the act of transportation, which is punished when accompanied by the requisite intent. It is evident that, speaking factually, the use of the singular "any" in reference to the subject of the transportation does not render a single act of transportation several simply because more than one woman is transported. Moreover "any" is not "each," and by an enactment of positive law, [14] the words, "any woman or girl" in this statute "include and apply to several persons." [15]

Congress customarily uses the adjective "any" in criminal statutes for the purpose of inclusion, not multiplication. The ordinary meaning is that *every* instance of the prohibited conduct is within the reach of the statute, whether one or several objects are involved and whatever their condition or quality; and not that the number of offenses is to be determined by multiplying the prohibited act by the number of such objects. [16] In the present in-

---

[14] Act of July 30, 1947, c. 388 § 1, 61 Stat. 633.

[15] 1 U.S.C. § 1. This reading is prescribed "unless the context indicates otherwise." In this instance there is nothing in the context which points to a singular reading of "any," and, as will be seen, there is much that supports the plural.

[16] Referring to examples already cited, the statute in *Braverman* v. *United States*, 317 U. S. 49, referred to "any offense against the United States;" and that in *United States* v. *Universal CIT Credit Corporation*, 344 U. S. 218, to "each of his employees" and "any of his employees." See also *United States* v. *Adams*, 281 U. S. 202, where a single offense was held to have been committed by two false entries under a statute

stance, for example, although Congress was attempting primarily to eliminate a massive "white slave" traffic, and "prevent panderers and procurers from compelling thousands of women and girls against their will and desire to enter and continue in a life of prostitution,"[17] the phrase "any woman or girl" serves to make it clear that Congress also desired to punish the prohibited act of transportation even though only one female was involved and irrespective of whether she was a woman of virtue acting under compulsion, or an eager and acquiescent woman of sin.[18] The offense turns upon neither the number nor the character of the women involved; it is complete when "any" woman is transported with the requisite intent.

The immediate impression conveyed by the words themselves that Congress intended to create an offense of which the act of transportation was the unit, receives strong verification from the statutory context. The language directed at the transportation itself appears as the first paragraph of Section 2421 of Title 18—Section 2 of the

---

referring to "any false entry" (18 U.S.C. § 1005). In each of the following lower court cases the offense was held to be single though involving multiple objects under a statute containing the adjective "any": "any letter," etc., *Smith* v. *United States*, 211 F. 2d 957 (C. A. 6); "any question" *United States* v. *Orman*, 207 F. 2d 148 (C. A. 3); "any of the funds", *United States* v. *Matsinger*, 191 F. 2d 1014 (C.A. 3); "any of the drugs mentioned," *Anderson* v. *United States*, 189 F. 2d 202 (C. A. 6); "any letter, . . . bag, . . ." etc., *Kerr* v. *Squier*, 151 F. 2d 308 (C. A. 9); and *Johnston* v. *Lagomarsino*, 88 F. 2d 86 (C. A. 9) (contra *Warner* v. *Pescor*, 163 F. 2d 670 (C. A. 8)); "any raisins," *Halverson* v. *United States*, 162 F. 2d 308 (C. A. 9); "any person," *Vautrot* v. *United States*, 144 F. 2d 740 (C.A. 8), *Lockhart* v. *United States*, 136 F. 2d 122 (C.A. 6); and *Dimeaza* v. *Johnston*, 130 F. 2d 465 (C. A. 9); "any narcotic drug," *Parmagini* v. *United States*, 42 F. 2d 721 (C. A. 9), certiorari denied, 283 U. S. 818; "any obscene . . . book," etc., *Clark* v. *United States*, 211 Fed. 916 (C. A. 8); "any contribution" from "any such person," *United States* v. *Cason*, 39 F. Supp. 730 (D.C. W.D. La.), and *United States* v. *Scott*, 74 Fed. 213 (D.C.D. Ky.).

[17] *Mortensen* v. *United States*, 322 U. S. 369, 377, and references there cited.

[18] *Gebardi* v. *United States*, 287 U. S. 112, 118, 121; *United States* v. *Holte*, 236 U. S. 140, 145. See *United States* v. *Beach*, 324 U. S. 193.

original Act. The second paragraph of the Section provides for the punishment of one who procures the transportation, or tickets or other evidence of right to transportation, for the forbidden purpose. The transportation itself having been prohibited by the first paragraph of the section, this language, although still primarily concerned with the transportation, seeks to punish conduct one step removed from it.

The two immediately following sections in both the Criminal Code and original act, are directed at conduct still one further step removed from the act of transportation. They prohibit the acts of coercion or enticement, which in the normal case would precede and lead to the procurement of transportation and the act of transportation itself. Section 2422 makes it a crime to persuade, induce, entice or coerce a woman or girl to go from one place to another in interstate commerce for the unlawful purposes described; and Section 2423 punishes the same conduct when involving a female less than 18 years of age. While the offense of procuring transportation, and those of enticing or coercing the females who are transported, are, for constitutional purposes, conditioned upon the subsequent occurrence of an interstate journey, they are not directed at the transportation itself, but at steps which frequently precede it. They thus serve to complete a pattern of legislative interdiction of each successive step in the criminal transaction culminating in the act which is the object of prohibition in Section 2421—the act of transportation itself. *Albrecht* v. *United States*, 273 U.S. 1, 11.

The Legislative History. This reading of the Mann Act, which fixes the act of transportation as the gist of the offense created by this provision of the statute, finds solid support in its legislative history.

The legislative history of the Mann Act has been exhaustively examined and vigorously disputed before this Court

on frequent occasions;[19] but there can be no serious argument as to its meaning on the point suggested here. In the years immediately preceding the passage of the Act, the international and interstate "White Slave" traffic had been the subject of a number of investigations, which had received widespread publicity.[20] The United States Attorney in Chicago had instituted a series of prosecutions which further dramatized the existence of an organized movement of females in the channels of national and international commerce for purposes of prostitution.[21] On June 15, 1908, President Theodore Roosevelt proclaimed our adherence to an international arrangement "for the suppression of the white slave traffic;" and the Mann Act was in part designed to effectuate that agreement.[22] The general purpose of the Mann Act, as described in its title, was "To further regulate interstate and foreign commerce by prohibiting the transportation therein for immoral purposes of women and girls, and for other purposes."[23] The same theme was succinctly expressed in the statute's short title, the "White Slave Traffic Act."[24]

The opposition to the bill was based almost entirely upon

---

[19] *Cleveland* v. *United States*, 329 U. S. 14, 17-18, 20-21, 27-28; *United States* v. *Beach*, 324 U. S. 193, 195, 196-200; *Mortensen* v. *United States*, 322 U. S. 369, 376-377; *Caminetti* v. *United States*, 242 U. S. 470, 489-490, 496-499; and *United States* v. *Holte*, 236 U. S. 140, 146.

[20] *United States* v. *Beach*, 324 U. S. 193, 197; House Report No. 47, 61st Congress, 2d Sess., pp. 19-23, 24.

[21] House Report No. 47, 61st Cong., 2d Sess., pp. 12-13, 24-25, 28-37.

[22] House Report No. 47, 61st Cong., 2d Sess., pp. 3, 15-16. The handling of the problem of international prostitution was rendered particularly acute by the action of this Court on April 5, 1909, in declaring unconstitutional that portion of the Act of February 20, 1907, which made it a felony to harbor an alien woman for immoral purposes within three years after her entry. *Keller* v. *United States*, 213 U. S. 138. It is noteworthy that the Congress, in this same session, solved the problem by an amendment which keyed the offense directly to the act of importation. Act of March 26, 1910, 61st Cong., 2d Sess., 36 Stat. 263.

[23] 36 Stat. 825.

[24] 36 Stat. 827.

the thesis that, although cast in the form of a regulation of interstate commerce, the Statute was in reality an attempt to regulate prostitution and other immoral practices exclusively within the police power of the states.[25] Because of the existence of this issue, the proponents of the bill were led to introduce into the record repeatedly and in a multitude of forms, assurances that the intent of the statute was to deal solely with the evil of the transportation of women and girls in interstate and foreign commerce, for the immoral purposes. Thus, for example, the Report of the House Committee on Interstate and Foreign Commerce, submitted with the bill by Mr. Mann who was Chairman of the Committee and author of the Mann Act, denies any purpose to interfere with state control of local immorality, insists repeatedly that the evil at which the statute is directed is the movement of women and girls in commerce —the importation of women and girls and their transportation from one state to another—and points out that the prohibitions of the Act "have been so drawn that they are limited to cases in which there is an act of transportation in interstate commerce of women for purposes of prostitution."[26] Identical statements appear in the Senate Report.[27] The bill was not debated in the Senate but the same theme ran through the debate in the House; the proponents of the bill repeatedly asserting that the constitutional basis for this portion of the statute was the power of Congress over transportation of persons in interstate and foreign commerce, and that its prohibitions were aimed solely at the transportation of persons in commerce.[28]

---

[25] See, for example, House Report No. 47, 61st Cong., 2d Sess., Part 2, *Views of the Minority*, particularly page 1; and discussion at 45 Cong. Record, 809-811, 1030-1035.

[26] House Report No. 47, 61st Cong., 2d Sess., pp. 1, 2, 3, 4, 5, 9, 10, 11.

[27] Senate Report No. 886, 61st Cong., 2d Sess., pp. 7, 8, 9, 10, 11.

[28] Particular attention is called to the discussion of Congressmen Russell, Peters and Sanders, who carried the burden of the legal argument for the proponents. 45 Cong. Record 814-821, 1035-1040.

From this legislative history there can be no fair question but that, for constitutional reasons as well as to avoid the charge of intermeddling in problems of local immorality, Congress directed its attention and intended to direct these penal provisions exclusively at the subject-matter of interstate transportation. As we have seen, all of the penal provisions of Sections 2, 3 and 4 of the Mann Act (18 U. S. C. §§ 2421, 2422, and 2423) depend upon the occurrence of an act of interstate transportation for their application, and the prohibition of the first paragraph of Section 2 involved in this case is explicitly directed at "Whoever knowingly transports," etc. From the legislative history as from the statutory language it would therefore seem the more reasonable interpretation to take the act of transportation as the intended measure of the offense created by the opening penal provision of the statute, in the absence of some clear indication that Congress intended that the physical unity of the act of transportation should be ignored and that this criminal sanction should be applied on the basis of a segmentation of the act of transportation which has no existence in fact.

Had Congress desired that the penalty for the act of criminal transportation be multiplied by the number of females involved, words were readily available to make that meaning clear. Three years before the passage of the Mann Act, Congress codified the law with respect to the regulation of immigration in the Act of July 1, 1907 (34 Stat. 898). A bill to amend this Act was considered by Congress concurrently with the bill which became the Mann Act.[29] Sections 4 and 5 of the Act of July 1, 1907,

---

[29] The proposed amendments to the Act of July 1, 1907 were reported to the House on December 17, 1909 (45 Cong. Record 245), and the bill that became the Mann Act on December 21, 1909 (45 Cong. Record 286). The two bills received the concurrent consideration of the House, and followed each other closely in the Senate, the amendments to the Act

which made it a misdemeanor to encourage the importation of any contract laborer, specifically provided that "separate suits may be brought for each alien" to recover the penalty imposed (34 Stat. 898, 900). Section 8 of the same statute, which made it a misdemeanor to land "any alien" not duly admitted and entitled to enter, similarly provided that the penalty of the section was applicable "for each and every alien so landed." (34 Stat. 898, 900-901).[30] Comparable provisions of the Immigration and Nationality Act of 1952 contain similar language.[31] In imposing separate penalties for each alien involved in a single transaction violating

---

of July 1, 1907 becoming law on March 26, 1910 (45 Cong. Record 3855), and the Mann Act receiving final approval three months later on June 25, 1910 (45 Cong. Record 9118).

[30] The Government asserts that the phrase "any alien woman or girl" in Section 3 of the Act of July 1, 1907 was "unquestionably employed in a singular sense," and further asserts that the language of the Mann Act was borrowed from this source. The Government therefore argues that the phrase should receive a singular construction in the Mann Act. Section 3 of the Act of July 1, 1907, also contained the phrase "in any such case," which the Mann Act did not. But the fact is that the language "any . . . woman or girl" was probably meant to include the plural in the Act of July 1, 1907, just as it is in the Mann Act. The phrase "in any such case" probably refers to each of the several offenses listed in the section (importing, holding, keeping, etc.) rather than to each of a number of females. As the Government points out, the statute which preceded the Act of July 1, 1907, used the word "women" instead of the phrase "any woman or girl." The change was made by Congress without decreasing the penalty, and without any indication in the legislative history that Congress intended to make any but a verbal change in the provision. In short, Congress apparently considered the word "women" and the phrase "any woman or girl" synonymous in this context, except that the latter made it clear that females of tender years were to be included. This conclusion is reinforced by the fact that in commenting on the changes introduced by the Act of July 1, 1907 in connection with the consideration of the Mann Act, the committees of both the House and Senate remarked on the addition of "or girl" by the Act of July 1, 1907, but made no comment on what the Government now asserts was also an important change from plural to singular in the very definition of the offense. House Report No. 47, 61st Cong., 2d Sess., p. 5; Senate Report No. 886, 61st Cong., 2d Sess., p. 3. There appear to be no court decisions on the subject.

[31] See Sections 1321, 1322, 1323, and 1324 of Title 8, U.S.C.

these provisions of the Act of July 1, 1907, the courts have relied entirely upon the explicit language quoted, strongly implying that in the absence of language of this kind, as in the statute involved in the present case, a contrary result would be reached.[32]

II

The Statute Has Been Construed as Condeminng An Act of Criminal Transportation, and Not the Means, Purposes Or Subjects Which the Act of Transportation May Embrace

In keeping with the view of the meaning of the language and legislative history of Section 2 of the Mann Act set out above, this Court, throughout the forty-five years of judicial interpretation and application of the statute, has consistently treated the act of interstate transportation as the gist of the offense now codified in the first paragraph of Section 2421.

The federal government has no inherent police power. The sole basis for federal intervention in this area is the involvement of interstate commerce. The thrust of the act, from the simple constitutional necessity, is the denial of the facility of interstate commerce to an evil and injurious

---

[32] In *Grant Brothers Construction Co.* v. *United States*, 232 U. S. 647, heavily relied upon by the government, the holding of this Court that where 45 aliens were brought into the United States at one time a separate penalty might be imposed with respect to each alien under Sections 4 and 5 of the Act of June 1, 1907, was based directly upon the language of the statute quoted in the body, the Court stating "this plainly means that a separate penalty shall be assessed in respect of each alien whose immigration or importation is knowingly assisted * * * in contravention of the statute." (232 U. S. at 664). And see *Sepulveda* v. *Squier*, 192 F. 2d 796, 798 (C. A. 9) and *Serentino* v. *United States*, 36 F. 2d 871, 872-873 (C. A. 1); *United States* v. *Martinez-Gonzales*, 89 F. Supp. 62 (D.C. S.D. Cal.), decided under subsequent reenactments of Section 8 of the Act of July 1, 1907. In *Martinez-Gonzales*, cases under the Mann Act were expressly distinguished "because the Mann Act does not require a separate punishment for each woman transported." (89 Supp. at 64).

trade. *Hoke* v. *United States*, 227 U. S. 308, 322; *Caminetti* v. *United States*, 242 U. S. 470, 491; *Mortensen* v. *United States*, 322 U. S. 369, 375; *Cleveland* v. *United States*, 329 U. S. 14, 19. Consequently "what the act condemns is transportation obtained or aided, or transportation induced in interstate commerce, for the immoral purposes mentioned." *Hoke, supra*, p. 320. "Transportation * * * or causing or aiding it, or furthering it in any of the specified ways, are the acts punished * * *." *Gebardi* v. *United States*, 287 U. S. 112, 118. The Court refers to "the transportation denounced" by the statute, *Hansen* v. *Haff*, 291 U. S. 559, 569, and describes the act as "a criminal statute outlawing interstate trips for immoral purposes." *Mortensen, supra*, p. 375. The statute "seeks to reach and punish the movement in interstate commerce of women and girls with a view to the accomplishment of the unlawful purposes prohibited." *Caminetti, supra*, p. 491. The offense is complete if the accused performs "the act which the statute condemns, viz, the transportation" of a woman for the purposes described. *Cleveland, supra*, p. 20. In *United States* v. *Beach*, 324 U. S. 193, it was urged upon this Court that the Mann Act should be held inapplicable to the District of Columbia because of the existence of numerous other federal statutes making criminal within the District various acts done for the purpose of prostitution—the unlawful purpose at which the Mann Act was also principally directed. The argument was rejected on the ground that "none of these enactments of local application speak of 'transportation' for immoral purposes, which is the act condemned by the Mann Act." (324 U. S. at 195).

In accordance with the premise that the interstate transportation is the act condemned under the pertinent language of Section 2421, the lower federal courts have uniformly held, with the exception of the ruling below and the few

with which it is in accord, that the act of transportation is the unit of the offense, and a multiplication of means, purposes, or subjects does not divide a single act of transportation into a multitude of crimes. By the same token it is held that different interstate journeys involving a single female constitute "separate and distinct prohibited transportations," and hence separate offenses.[33]

Thus, although the statute renders the act of transportation criminal when accomplished for any of a number of different purposes listed in the statute, it is held that a single act of transportation constitutes a single offense for which the transporter may be punished but once though he clearly entertained two or more of the specified purposes. *Mellor* v. *United States*, 160 F. 2d 757, 762 (C. A. 8) certiorari denied 331 U. S. 848; *Caballero* v. *Hudspeth*, 114 F. 2d 545, 547 (C. A. 10); *Malaga* v. *United States*, 57 F. 2d 822 (C. A. 1); *Blain* v. *United States*, 22 F. 2d 393, 395 (C. A. 8); *Roark* v. *United States*, 17 F. 2d 570, 573 (C. A. 8). The rationale of these decisions is that this portion of the Mann Act condemns the act of transportation accompanied by the requisite criminal intent, that the transportation is the gist of the offense, and that if there is but one transportation, there can be but one offense, whether the criminal intent of the transporter includes one of the prohibited purposes or several.[34]

---

[33] *Sink* v. *Cox*, 142 F. 2d 917, 918 (C. A. 8); *Reed* v. *United States* 142 F. 2d 435 (C. A. 5).

[34] See, for example, the opinion in the *Caballero* case at page 547 of 114 F. 2d:

> Whether a continuous transaction results in the commission of but a single offense or separate offenses is not dependent on the number of unlawful motives in the mind of the accused, but is determined by whether separate and distinct prohibited acts, made punishable by law, have been committed. • • •
>
> The emphasis in § 398, 18 U.S.C.A. is upon transportation. It is made a crime to transport in interstate commerce any female person for any of the prohibited purposes set out in the section. That

As originally enacted, the provision of the Mann Act prohibiting the criminal transportation, also specifically prohibited causing, aiding, or assisting the transportation or aiding or assisting in obtaining the transportation.[35] Here again, the Courts have held that the act of transportation is the measure of the offense under the statute, and the fact that the offender performed the act of transportation, caused it, and aided and assisted in it, did not make the single offense several. *Mellor*, *supra*, 160 F. 2d at 760-761; *Blain*, *supra*, 22 F. 2d at 395.[36] Other lower court cases holding, for a variety of purposes, that the act of transportation is the gist of the offense under the statute, are collected in a footnote.[37]

On the precise question involved in this proceeding, the Court of Appeals for the Tenth Circuit has ruled contrary to the case below in a carefully reasoned decision, *Robinson*

---

the gist of the offense is transportation is indicated by the pronouncement of the Supreme Court in those cases in which it has considered the act. * * *

* * *

It seems clear that what is prohibited is the transportation in interstate commerce of any female person for any of the interdicted purposes. One transportation constitutes but a single offense, whether the accused had in mind one or more of the prohibited purposes.

And the opinion in *Roark*, at page 573 of 17 F. 2d:

* * * It is one theory of this indictment that, if the person has but one immoral purpose, he is guilty of one crime, and is guilty of as many crimes as he may have immoral purposes. We do not think that the act is susceptible of that interpretation. A violation of either section is a violation, whether the transportation was for one of the purposes named or all of them. It is the obtaining or inducing the transportation for one or more of the immoral purposes which is condemned, * * *.

[35] These provisions were omitted from the Criminal Code as made unnecessary by 18 U. S. C. § 2.

[36] *Bowker* v. *Hunter*, 158 F. 2d 854 (C.A. 10) appears to be *contra*.

[37] *Batsell* v. *United States*, 217 F. 2d 257, 261 (C. A. 8); *McTure* v. *United States*, 213 F. 2d 65, 66 (C. A. 5); *Neff* v. *United States*, 105 F. 2d 688, 691 (C. A. 8). See also *Ellis* v. *United States*, 138 F. 2d 612 (C. A. 8).

v. *United States*, 143 F. 2d 276 (C.A. 10). Identifying the unlawful transportation as the gist of the offense, Judge Phillips pointed out that the act of transportation was a single and continuous one and that the offense was completed when the transportation crossed the state line, whether one woman was transported or several. While it is true that the transportation in order to come within the statute must be of one or more women or girls and for one or more of the immoral purposes designated in the statute, "merely because one element of a single criminal act embraces two persons or things, a prosecutor may not carve out two offenses by charging the several elements of the single offense in different counts and designating only one of the persons or things in one count and designating only the other person or thing in the other count." (143 F. 2d at 277.) Although finding it unnecessary to decide the question, the Court of Appeals for the Eighth Circuit appears to be in accord in its most recent discussion of the problem (*Mellor* v. *United States*, 160 F. 2d 757, 761, certiorari denied, 331 U. S. 848);[38] as is a district court in the Ninth Circuit.[39] The reports contain numerous cases in which a single act of transportation involving more than one woman is alleged as a single offense—a fatal duplicity if the government's present position is well taken.[40]

The court below and three others have held to the con-

---

[38] Cf. *Gillenwater* v. *Biddle*, 18 F. 2d 206 (C.A. 8), a case under 18 U. S. C. § 2423.

[39] *United States* v. *Westman*, 182 Fed. 1017, 1019 (D.C.D. Ore.)

[40] This was true of two of the four cases in which, on a consolidated hearing, the Supreme Court first considered the Mann Act and sustained its constitutionality. *Bennett* v. *United States*, 227 U. S. 333, Transcript of Record pp. 2-3; *Harris* v. *United States*, 227 U. S. 340, Transcript of Record pp. 2-3. And see, for example, *Dodson* v. *United States*, 215 F. 2d 196, 200 (C. A. 6); *Swanne Soon Young Pang* v. *United States*, 209 F. 2d 245 (C. A. 9); *United States* v. *Fleenor*, 162 F. 2d 935 (C. A. 7).

trary.[41] The decisions which multiply the penalty by the number of females involved argue that the act of transportation cannot be the unit of the offense because transportation itself is innocent and becomes criminal only when accompanied by the improper motive described in the statute. It is asserted that this purpose is necessarily peculiar to each female, and that the number of females transported should therefore define the offense. The argument is buttressed by the contention that the purpose of the statute is to protect each female victim from involvement in prostitution or other immorality, and by pointing out that since proof of the improper purpose as to one female would not prove it as to a different female, counts identical except for the female named would satisfy, superficially at least, the "same evidence" test.

The argument will not stand critical examination.

Obviously the fact that, standing alone, the act of transportation is innocent, does not mean that it cannot provide the measure of the offense when accompanied by the requisite intent. An agreement without an unlawful objective is innocent, but an agreement, unlawful because of its pur-

---

[41] *St. Clair* v. *Hiatt*, 177 F. 2d 374 (C. A. 5) *(per curiam)*, certiorari denied 339 U. S. 967, the government representing the case to be moot; *Crespo* v. *United States*, 151 F. 2d 44 (C. A. 1), certiorari dismissed, 327 U. S. 758; *United States* v. *St. Clair*, 62 F. Supp. 795 (D.C. W.D. Va.) The government argues that the decision in *Hoke* v. *United States*, 227 U. S. 308 is in "tacit approval." The indictments in *Hoke* were in multiple counts each alleging a violation of 18 U.S.C. § 2422 or § 2423 with respect to a different woman at the same general time and place. These provisions of the statute are directed at "Whoever knowingly persuades, induces, entices or coerces" a woman or girl, etc. whereas the provision of § 2421 involved in the present case is directed at "Whoever knowingly transports" etc. It may well be that the measure of the offense under §§ 2422 and 2423 is the act of persuasion or coercion as distinguished from the act of transportation which is the gist of the offense under § 2421. It appears from the opinion in *Hoke* that the acts of coercion and persuasion were in fact different as to at least some of the females involved (325 of 227 U. S.). In any event, the opinion of the Court does not indicate that it intended to pass upon the problem at all.

pose, is nonetheless the gist of the offense of conspiracy under 18 U. S. C. § 371.[42] The deposit of a letter is a wholly innocent act, but when a use of the mails is a part of a scheme to defraud it becomes the unit of the offense under 18 U. S. C. § 1341.[43]

The next step in the argument, and the critical one, is that the criminal purpose defined in Section 2421 is necessarily selective as to each individual female, and this "separate" criminal intent, plus the general act of transportation, was intended to make out a separate offense with respect to each female. The argument is faulty in two respects,—it confuses multiple objects with multiple intents, and, more important, it misconceives the nature of the offense created by Section 2421.

The penalties of the statute "are directed at the acts of the transporter,"[44] and it is the intent of the transporter that governs.[45] The mere fact that the transporter carries two females in commerce obviously does not mean that his intent is necessarily multiple. In the present case, for example, it is clear that the petitioner acted from a "singleness of thought, purpose or action"[46] which embraced the movement and activities of both Miss Lay and Miss Miller equally and indifferently. His intent was in reality single; and to say that it was multiple simply because two women were involved is to create a fiction. The offense would then in fact be multiplied simply because the objects were multiple, and this, of course, would be clearly wrong.[47] For the

---

[42] *United States* v. *Falcone*, 311 U. S. 205, 210.

[43] *Badders* v. *United States*, 240 U. S. 391, 394. Moreover, the argument goes too far for the government's own purposes. If the act of transportation standing alone is not prohibited, neither is the criminal intent which the government suggests as the unit of the offense.

[44] *Gebardi* v. *United States*, 287 U. S. 112, 119.

[45] *Caballero* v. *Hudspeth*, 114 F. 2d 545, 547 (C. A. 10).

[46] *United States* v. *Universal CIT Credit Corporation*, 344 U.S. 218, 224.

[47] See pages 16-17, *supra*, and cases cited in footnotes 6 and 7.

purpose of interpreting Section 2421, it makes no difference that the transporter *may* have as many separate intents as there are females transported unless it is always so. The argument is that Section 2421 should be read as intending to impose a separate penalty for each woman transported because the criminal intent described by the statute is *necessarily* peculiar to each female and hence the transporter *necessarily* entertains as many separate criminal intents under the statute as there are females transported. The structure of interpretation fails with the failure of its premise that intent is necessarily and invariably multiple whenever the objects of the transportation are multiple.

The error runs more deeply, however, than a mere confusion between objects and intent; it is based upon a fundamental misconception of the nature of the offense under Section 2421. The statute prohibits a use of interstate commerce for an immoral purpose. Once again, the statute is concerned with the act of the transporter and his intent. If he performs an act of transportation with the intent described in the statute, the policy of the statute is violated, the definition of the offense is satisfied, and he is subject to the statute's penalties. The act of transportation with the requisite intent being present the completed offense is not multiplied by the fact that the transporter may have entertained an intent that exceeded the minimum requirement of the statute. Cases holding to this effect where the transporter's intent included two or more of the criminal purposes described in the statute directed at a single female have been mentioned earlier.[48] There is no apparent reason why the same result should not follow where the transporter's intent encompasses an evil purpose or purposes directed at different females, and this Court has indicated that it does. The principle is stated by the Court in *Morgan*

---

[48] See page 30, and footnote 34, *supra*.

v. *Devine*, 237 U. S. 632, 640.[49] The real question is not whether the transporter's intent was multiple or single, but whether the act made punishable by the statute has been committed once or several times "with the requisite intent." If a single act of transportation prohibited by the statute has been committed, the only question is whether the transporter committed the single act with an intent made guilty by the statute or whether his intent was innocent. If his intent was guilty he has violated the statute, if it was innocent he has not; but in any case his offense is single if he has committed the prohibited act only once.[50]

For this purpose the offense created by Section 2421 of the Mann Act is like that created by the general conspiracy statute, 18 U. S. C. § 371, which makes it a crime "to conspire * * * to commit any offense against the United States," if an overt act is committed in furtherance of the

---

[49] See also *Caballero* v. *Hudspeth*, 114 F. 2d 545, 547 (C. A. 10).

[50] *Bennett* v. *United States*, 227 U. S. 333, relied upon by the government, appears to be in accord. The indictment in that case charged the transportation of two women, but the evidence established the transportation of only one. The Court of Appeals rejected the contention that there was a fatal variance between allegation and proof, stating:

> The violation of the statute is complete if one person is transported, and the fact that two persons are named in the same count, instead of basing a separate count upon the travel of each person, should not be fatal to a conviction. It is true that where two persons are named as the subject of the offense, and it is proved as to one of them only, there is a seeming variance, but it is really a failure of proof as to a thing which it was not necessary to allege. (194 Fed. at 633).

This Court affirmed, saying shortly,

> . . . This again is a contention which has more of technicality than substance. How what the defendant did not do can be considered material description of what she did do is not easy to imagine. (227 U. S. at 338-339).

Both this Court and the court below appear to be holding that the offense is the act of transportation with the requisite intent, and that, in accordance with the principle of *Morgan* v. *Devine*, the act of transportation and the criminal intent required by statute being present, it is immaterial whether they are directed at one woman or at two.

conspiracy. In *Braverman* v. *United States*, 317 U. S. 49, the petitioners were indicted and convicted on seven counts each charging a conspiracy to violate a different provision of the internal revenue laws of the United States. The evidence disclosed only a single conspiracy, but separate sentences were imposed on each count of the indictment on the theory that the statute made it a crime to conspire to commit "any" offense against the United States, and hence created a separate crime for each offense which the defendants intended to commit. This Court reversed. The Court pointed out that the statute is directed at the act of conspiring, that the offense under the statute is complete when a single agreement to commit "any" crime is evidenced by an overt act, and that the number of crimes which it is the object of the conspirators to commit served only to define the nature and extent of the conspiracy:

> * * * Whether the object of a single agreement is to commit one or many crimes, it is in either case that agreement which constitutes the conspiracy which the statute punishes. The one agreement cannot be taken to be several agreements and hence several conspiracies because it envisages the violation of several statutes rather than one. (317 U. S. at 53).

The Court further pointed out that the conspiracy violates only a single statute—the general conspiracy statute itself. The conspiracy is distinct from the crimes which it contemplates, and does not violate the statutes whose violation is the object of the conspiracy. Further,

> * * * Since the single continuing agreement, which is the conspiracy here, embraces its criminal objects, it differs from successive acts which violate a single penal statute and from a single act which violates two statutes. See *Blockburger* v. *United States*, 284 U. S.

> 299, 301-304; *Albrecht* v. *United States*, 273 U. S. 1, 11, 12. The single agreement is the prohibited conspiracy, and however diverse its objects it violates but a single statute * * *. For such a violation only the single penalty prescribed by the statute can be imposed. (317 U. S. at 54).

The parallel to the offense created by 18 U. S. C. § 2421 is patent. The provision of the Mann Act involved here is directed at the act of transportation; the offense under the statute is complete when a single act of transportation involving one of the defined purposes and a single female, occurs. Whether the transporter's purposes and subjects are one or several, it is in either case the act of transportation with the requisite intent which the statute punishes. The one act of transportation cannot be taken to be several acts of transportation and hence several offenses against the statute simply because it involves several purposes and subjects rather than one. The prohibited transportation is distinct from the immoral conduct which is contemplated, and the act of transportation violates only the Mann Act itself. Where the multiple purposes and objects are embraced in a single act of prohibited transportation which offends only a single statutory prohibition, the case is distinguishable from those in which successive acts violate the same statute or a single act violates different statutes. The single act of transportation with the requisite intent is the offense prohibited, and however diverse its purposes its violates but a single statute, and only the single penalty prescribed by that statute can be imposed.

No doubt the basic reason for the decision below is reflected in the contention that the statute should be interpreted as creating a separate offense for each female transported because the real purpose of Congress was to inhibit prostitution and other immoral conduct and to protect

each female victim from these evils, and not simply to prohibit immoral transportation as such. Essentially the same feeling probably underlies the final stand of the Court below that its decision was somehow justified by an "inherent difference that exists between inanimate objects and human beings."[51] Chivalry is directed at the protection of the solitary maiden in distress. It is somehow almost immoral to suggest that the penalty of the statute should not be separately applied on behalf of each female involved.

Undoubtedly Congress intended to penalize the use of interstate commerce in furtherance of schemes to entrap or coerce individual females into a life of immorality; and when a single female is transported in interstate commerce pursuant to such a scheme the statute clearly applies. But, as Congress no doubt knew, not every woman who lives in sin is an innocent victim enticed or coerced from the path of virtue.[52] It is doubtful, for example, that a multiplication of the penalty imposed upon Mr. Bell can be justified as effectuating a Congressional intent to vindicate and protect the innocence of Miss Miller and Miss Lay. This Court has rejected "the illusion that the woman always is the victim,"[53] and with it the argument that the Mann Act is to be construed on the premise that its purpose is to protect the individual female from victimization, and has held that the woman transported may, in appropriate circumstances, be guilty of conspiring to transport herself in violation of the statute.[54]

---

[51] *Bell* v. *United States*, 213 F. 2d 629, 630 (C. A. 6).

[52] "Congress set out in the Mann Act to deal with cases which frequently, if not normally, involve consent and agreement on the part of the woman to the forbidden transportation." *Gebardi* v. *United States*, 287 U.S. 112, 121.

[53] *United States* v. *Holte*, 236 U.S. 140, 145.

[54] *Gebardi* v. *United States*, 287 U.S. 112; *United States* v. *Holte*, 236 U.S. 140. See particularly the dissent of Justice Lamar in *Holte*, 236

The fact, of course, is that the real object of the statute was to protect the public by prohibiting the use of the channels of commerce to facilitate prostitution and other immoral activities. The statute is directed against the person who uses commerce for these purposes, whether the subjects transported are acquiescent and experienced prostitutes, as in the present case, or truly victims.[55] In either instance, the channels of commerce are fouled by an act of evil transportation, and it is this act that the statute prohibits.

From what has been said it is clear that it would be equally erroneous to construe this statute as if it were a direct prohibition of prostitution and other immoral conduct. Congress had no power to deal directly with local immorality, and in passing the Mann Act it repeatedly and vehemently insisted that it was not attempting to do so.[56] The ultimate evil at which both federal and state enactments in this area are aimed is no doubt the immorality itself, and an ultimate desire to curtail this immorality no doubt provided the motivation for congressional action; but the impulses which motivated Congress ought not to be confused with legislative intent. The record could not be clearer that Congress intended by this provision of the statute to reach the act of interstate transportation for immoral purpose, and that alone.[57] Surely it is more reasonable to treat as the unit of the offense the act of transportation which provided the sole basis for the power of Congress to legislate, than to measure the offense by reference to a purpose to commit acts of immorality over which Congress

---

U.S. at 146-151. Accord *Corbett* v. *United States*, 299 Fed. 27, 30 (C.A. 9). See also *Miller* v. *United States*, 95 F. 2d 492 (C.A. 9); *Dawson* v. *United States*, 10 F. 2d 106 (C.A. 9), certiorari denied 271 U.S. 687.

[55] See note 18, *supra*.

[56] See pages 24-25, *supra*.

[57] See pages 23-26, *supra*.

possessed no power whatever. The argument urged here to support a multiplication of the offenses by the number of women involved, was advanced in *Wilson* v. *United States*, 232 U. S. 563, 571, in support of the thesis that the Mann Act was not violated if the criminal purpose was abandoned after the interstate journey but before any immoral conduct occurred:

> It is argued that the end and object of the act is to prevent immorality and trafficking in girls, and not the mere act of transportation. But we think that by the plain language of the statute, the offense is complete when any such woman or girl shall be transported in interstate or foreign commerce. * * *

The intent of this statute was not to punish local immorality, and the statute does not purport to define an "offense against persons." The intent was to deny the facility of interstate commerce to a traffic viewed as evil, and the statute defines an offense against commerce itself. An elaborate structure of argument based upon a distinction between crimes against persons and crimes against property, is inapposite.[58] A cogent analogy is suggested in the difference in result reached in cases involving direct assault, and those involving assault under 18 U.S.C. § 2113. Subsections (a) and (b) of Section 2113 defines the offenses of robbery and larceny with respect to banks and savings and loan associations subject to federal regulation and control. Subsection (d) of Section 2113 provides that whoever in committing robbery or larceny of a bank within the federal control "assaults *any* person, or puts in jeopardy

---

[58] So too is an argument that the offense is multiple where several females are involved, because the "consequences" of the act are multiple. The "consequence" against which this statute was directed is the misuse of the facility of commerce, and this "consequence" is produced but once if there is but one act of criminal transportation.

the life of *any* person by the use of a dangerous weapon" (emphasis supplied) shall be subject to a prescribed penalty. It is held that the offense established by subsection (d) is the same as that defined in subsections (a) and (b), aggravated by assault or assault with a dangerous weapon; that the offense of robbery or larceny of a federally controlled bank by assault is completed if in the course of such a robbery or larceny "any person" is assaulted, and is not multiplied because the assault may be directed at a number of persons, though the contrary might be true if the offense under the statute were the assault itself.[59] So in the instant case, the offense under the statute is transportation for immoral purposes and not the immoral conduct itself; and whatever the proper interpretation of the statute might be if an offense against the person were indeed its subject matter, the penalty for a single act of prohibited transportation ought not to be multiplied by the number of persons involved under the statute as it reads.[60]

---

[59] "If the lives of a dozen persons were imperiled, the fact that the draftsman chose to name each individual in a separate count rather than include them all in one count * * * did not constitute each count a second and distinct bank robbery, although, if the offense charged had been that of assault upon the individual, it would do so." *Dimenza* v. *Johnston*, 131 F.2d 47, 48 (C.A. 9). (On rehearing. See original opinion at 130 F.2d 465). Accord: *Vautrot* v. *United States*, 144 F.2d 740 (C.A. 8); *Lockhart* v. *United States*, 136 F.2d 122 (C.A. 6). Robbery accompanied by assault against more than one person was charged in a single count in the following cases: *Duboice* v. *United States*, 195 F.2d 371 (C.A. 8); *Ward* v. *United States*, 183 F.2d 270 (C.A. 10) certiorari denied 340 U.S. 864; *Gebhart* v. *United States*, 163 F.2d 962 (C.A. 8); *Hewitt* v. *United States*, 110 F.2d 1 (C.A. 8) certiorari denied 310 U.S. 641. See also *Costner* v. *United States*, 139 F.2d 429 (C.A. 4); *Schultz* v. *Zerbst*, 73 F.2d 668 (C.A. 10), and *Schultz* v. *Biddle*, 19 F.2d 478 (C.A. 6), in which an assault upon more than one mail custodian with intent to steal mail matter is alleged as a single offense under 18 U.S.C. § 2114.

[60] Furthermore the cases do not support the proposition that federal statutes creating crimes directed at persons, invariably or even usually impose a separate penalty for each person involved. See page 17, and cases cited in footnote 7, *supra*.

Finally, the penalty for an act of criminal transportation under Section 2421 cannot properly be multiplied simply because the proof required to show an immoral purpose as to female A would be different than the proof required to show an immoral purpose as to female B. If this were all that the "same evidence" test meant, every criminal act directed at more than one person or one object would necessarily be divisible by the number of persons or objects involved. The cases do not support such a generalization.[61] It is questionable whether the "same evidence" test has any utility in determining whether a single act constitutes one or more violations of the same statute, but at least it must be applied to this situation with some discrimination. If a mere difference in proof as to the transporter's intent were sufficient to make two offenses of a single act of transportation, then two offenses would exist where the transporter carried one woman in interstate commerce for two different purposes, either of which would satisfy the statutory definition of the offense. Multiple offenses would also occur where a single continuous act of transportation involved multiple crossings of state lines—as a journey from Maryland to Virginia almost inevitably would in this area, for example. Obviously the test must be applied, if at all, with careful reference to the nature of the offense created by the statute. The offense created by Section 2421 is an act of transporting a female in interstate commerce with the requisite intent. While it is true that proof of the transportation of female A with the intent described in the statute would be different than the proof required to sustain a charge relating to the transportation of female B with the requisite intent, either set of evidentiary data would be sufficient to convict the transporter under an indictment alleging the single act of transportation of A and B with

[61] See pages 16-17, and cases cited in footnotes 6 and 7, *supra*.

the required intent—and this is the single offense created by the statute. If the proof failed as to the movement or the intent with respect to either female, the difference between allegation and proof would simply relate to an immaterial fact—that is, that the required act of transportation and the required criminal intent involved more than a single female. *Bennett* v. *United States*, 227 U.S. 333.

• • • • • • •

It is respectfully submitted that, at the very minimum, a purpose to create a distinct offense and punish petitioner separately with respect to each female involved in a single act of interstate transportation is not clearly and plainly expressed by Section 2421; and that petitioner is therefore entitled to the relief for which he prays.

The subject matter of this statute is such as inevitably to engage the emotions and tempt to whatever enlargement of the language is needed to reach conduct which all must condemn.[62] This Court has had occasion to suggest that previous constructions of the Act "may have led the federal government into areas of regulation not originally contemplated by Congress," and to admonish "against adding another chapter of statutory construction and application which would have a similar effect."[63]

It is respectfully submitted that to permit the multiplication of the penalties of this staute without regard to the number of unlawful uses of interstate transportation would extend the statute beyond its clearly intended scope, denying petitioner the protection of the rule of strict construction of criminal penalties to which he is entitled, and would,

---

[62] *Caminetti* v. *United States*, 242 U. S. 470, 501-502 (Justice McKenna dissenting).

[63] *Mortensen* v. *United States*, 322 U.S. 369, 376.

indeed, add "another unfortunate chapter * * * to the troubled history of the White Slave Traffic Act."[64]

Conclusion

For the foregoing reasons, it is respectfully submitted that the judgment of the court below denying petitioner's motion for correction of sentence should be reversed, with instructions to vacate the sentence imposed under the Second Count of the indictment.

JAMES R. BROWNING,
Counsel for Petitioner,
Suite 1021 Tower Bldg.,
Washington 5, D. C.

PERLMAN, BALDRIDGE, LYONS & BROWNING,
1021 Tower Building,
Washington 5, D. C.

---

[64] *Cleveland* v. *United States*, 329 U. S. 14, 24 (Justice Murphy, dissenting).

APPENDIX

The four Sections of the Criminal Code which are based on the White Slave Traffic Act of June 25, 1910 (36 Stat. 825, Ch. 393), are Sections 2421, 2422, 2423, and 2424, of Title 18, USC, which read in full as follows:

2421. Transportation generally.

Whoever knowingly transports in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or

Whoever knowingly procures or obtains any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in the District of Columbia or any Territory or Possession of the United States, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in the District of Columbia or any Territory or Possession of the United States—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

2422. Coercion or enticement of female.

Whoever knowingly persuades, induces, entices, or coerces any woman or girl to go from one place to

another in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and thereby knowingly causes such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

2423. Coercion or enticement of minor female.

Whoever knowingly persuades, induces, entices, or coerces any woman or girl who has not attained her eighteenth birthday, to go from one place to another by common carrier, in interstate commerce or within the District of Columbia or any Territory or Possession of the United States, with intent that she be induced or coerced to engage in prostitution, debauchery or other immoral practice, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

2424. Filing factual statement about alien female.

(a) Whoever keeps, maintains, controls, supports, or harbors in any house or place for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl within three years after she has entered the United States from any country, party to the arrangement adopted July 25, 1902, for the suppression of the white-slave traffic, shall file with the Commissioner of Immigration and Naturalization a statement

in writing setting forth the name of such alien woman or girl, the place at which she is kept, and all facts as to the date of her entry into the United States, the port through which she entered, her age, nationality, and parentage, and concerning her procuration to come to this country within the knowledge of such person; and

Whoever fails within thirty days after commencing to keep, maintain, control, support, or harbor in any house or place for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl within three years after she has entered the United States from any country, party to the said arrangement for the suppression of the white-slave traffic, to file such statement concerning such alien woman or girl with the Commissioner of Immigration and Naturalization; or

Whoever knowingly and willfully states falsely or fails to disclose in such statement any fact within his knowledge or belief with reference to the age, nationality, or parentage of any such alien woman or girl, or concerning her procuration to come to this country—

Shall be fined not more than $2,000 or imprisoned not more than two years, or both.

(b) In any prosecution brought under this section, if it appears that any such statement required is not on file in the office of the Commissioner of Immigration and Naturalization, the person whose duty it is to file such statement shall be presumed to have failed to file said statement, unless such person or persons shall prove otherwise. No person shall be excused from furnishing the statement, as required by this section, on the ground or for the reason that the statement so required by him, or the information therein contained, might tend to criminate him or subject him to a penalty or

forfeiture, but no person shall be prosecuted or subjected to any penalty or forfeiture under any law of the United States for or on account of any transaction, matter, or thing, concerning which he may truthfully report in such statement.

(1260-9)